



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DEC 30 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael J. Ward, Chairman
CSX Corporation
500 Water Street
Jacksonville, Florida 32202

Re: Clean Water Act Show Cause Letter

Dear Mr. Ward:

The United States Environmental Protection Agency (EPA) writes this letter to provide CSX Corporation (CSX) an opportunity to meet with the EPA and discuss settlement of Clean Water Act (CWA) violations at several of its rail yard operations in Maryland and West Virginia identified during EPA inspections. As you are aware, on November 8, 2012, EPA issued CSX a CWA Section 308 Information Request (Information Request). CSX provided responses to this request on January 18, 2013. Based upon information received in your responses and conditions observed during EPA inspections, EPA believes CSX has violated Section 301 of the CWA, 33 U.S.C. § 1311, by not complying with the terms of its National Pollutant Discharge Elimination System permits at several of its rail yards.

CWA Violations Identified by EPA

Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of any pollutant from a point source to water of the United States except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

EPA authorized the states of Maryland and West Virginia to issue NPDES permits in September 1974 and May 1982 respectively under Section 402(b) of the Act, 33 U.S.C. § 1342(b). EPA inspected four CSX facilities in Region III from 2011 through 2012. Two of these facilities, Chesapeake Bay Piers (MD0057371) and Brunswick Rail Yard (MD0000221)



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were issued NPDES permits from Maryland. Below are the findings of EPA's four CSX inspections.

Chesapeake Bay Pier Facility

During the April 28, 2011 inspection of CSX's Chesapeake Bay Pier facility, the EPA inspection team identified the following violations of the Permit and the Permit Requirements of the Storm Water Pollution Prevention Plan (SWPPP):

Failure to Enclose or Cover Salt Piles: Section I.S.2.e of the permit requires "Storage piles of salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation." During the site inspection there were no structures observed on the salt pads for the storage and protection of possible salt piles.

Respondent Failed to Maintain Good Housekeeping on Site: Section I.S.2.b.ii of the permit requires the permittee to maintain "Good housekeeping that requires the maintenance of a clean, orderly facility." At the time of inspection coal dust was seen throughout the piers, beneath the conveyor system and in the storm water inlets which discharge directly into Curtis Bay. Coal was observed falling off the uncovered conveyor and landing directly into Curtis Bay.

The Respondent Failed to Identify Settling Pond Maintenance Schedules: Section I.O.2 of the permit states "The permittee shall excavate all settling ponds, as required, to provide sufficient settling of solids." There is no discussion in the SWPPP which identified these basins as Best Management Practices (BMPs) or when these BMPs are required to be excavated and how the excavated materials will be disposed. There is no established schedule or procedure in place to determine when settlement ponds are to be cleaned/excavated.

Respondent Failed to Comply with Their SWPPP: The facility SWPPP states that "A clean sweep is completed after each operation (i.e. sweep/scoop). Cleaning occurs as unloading occurs." During the facility inspection the ore pier was inactive, therefore a clean sweep was completed prior to inspection. During the inspection iron ore pellets were found throughout the pier and were seen in the Bay. The facility failed to thoroughly cleanup the pier after unloading iron ore.

Respondent Failed to Comply with the Permit Requirements of the SWPPP: Section I.S.2.b.iv of the permit requires the permittee to identify which areas have a potential for significant soil erosion in their SWPPP. There was no such analysis contained in the SWPPP.

Brunswick Rail Yard Facility

During the May 21, 2012 inspection of CSX's Brunswick Rail Yard facility, the EPA identified the following violations of the permit and/or SWPPP:

Respondent Failed to Include all the Permit Required Components in their SWPPP: Section I.Q.2.a.iii requires the permittee to provide "A narrative description of significant materials that have been treated, stored or disposed in a manner which allowed exposure

to storm water..." The SWPPP failed to provide a description or mention of old railroad ties, used equipment and gravel/sand piles that were stored on site.

Respondent Failed to Comply with their SWPPP: Table 2-4 of the SWPPP states that "Dumpsters utilized throughout the facility are typically closed top and/or covered to prevent contact with storm water." During the inspection, numerous dumpsters were observed uncovered and exposed to precipitation and the elements.

Respondent Failed to Comply with their SWPPP: Table 2-4 of the SWPPP states that "New and/or used materials are generally stored on pallets, concrete pads, under cover, or in staging areas." During the inspection used materials were observed exposed to the elements without any covering.

Respondent Failed to Comply with the Good Housekeeping Requirements of their Permit and SWPPP: Section I.Q.2.b.ii of the permit states "Good housekeeping that requires maintenance of a clean, orderly facility." Table 3-0 of the SWPPP describes Good Housekeeping as storing all unused material under cover prior to recycling or disposal when feasible. In addition to the uncovered dumpsters and material storage areas, drums were stored outside with no cover for protection from the elements.

Respondent Failed to Comply with the Training Requirements of their SWPPP: Table 3-0 of the SWPPP requires the permittee to provide annual training on the SWPPP to all personnel. The Road Foreman for CSX's Brunswick facility who accompanied EPA on its inspection was unaware of the facility having a SWPPP or its requirements at the time of inspection.

Cumberland Rail Yard Facility

During the August 30, 2011 inspection of CSX's Cumberland Rail Yard facility, the EPA identified the following violation:

Respondent was Discharging without a Permit: Section 301(a) of the Clean Water Act states that "Except as in compliance with this section and sections 302, 306, 307, 318, 402 and 404 of this Act, the discharge of any pollutant by any person shall be unlawful." Under 40 CR 122.26(b)(14)(i)-(ix), (xi), tank washouts are an activity requiring coverage of an industrial storm water permit. During the inspection, inspectors observed personnel washout a railcar of molten sulfur residue. The activity took place in an area that was not discharging to the pretreatment facility and residue was left on the ground for transport via overland flow to surface waters of the United States. Also, the facility appears to have storm water inlets in the footprint of the rail car maintenance facility that discharged directly to surface waters.

Grafton Rail Yard Facility

During the August 31, 2011 inspection of CSX's Grafton Rail Yard facility, the EPA identified the following violation of the Spill Prevention, Control and Countermeasures (SPCC) Plan:

Respondent Failed to Adhere to their SPCC Plan: Section 6.8 of the Respondent's SPCC Plan states "Petroleum contaminated materials, such as soil and absorbents, must be

collected, stored and disposed of properly.” During the inspection, sand used to absorb a previous spill was left on the ground for eventual off site migration and an oily used boom was left exposed to the elements without suitable containment. In these instances petroleum contaminated substances were not collected or disposed of properly.

Additional Violations

Review of the CSX’s response to EPA’s November 8, 2012 RFI found the following violations:

Respondent Failed to Comply with their NPDES Effluent Limits: In CSX’s signed and certified response to EPA’s Section 308 RFI, CSX identified and acknowledged two effluent violations at NPDES permitted facilities since September 2009. The violations occurred at CSX’s Riverside Yard (MD0000264) and Clifton Forge Yard (VA0003344).

Request to Show Cause

EPA believes that the issuance of an Administrative Complaint seeking assessment of a civil penalty of \$153,000 for the aforesaid violations, and the issuance of an Administrative Compliance Order, are the appropriate enforcement responses in this matter. Prior to issuing an Administrative Complaint and Administrative Compliance Order, however, EPA is providing you an opportunity to confer with the Agency and show cause why a reduced civil penalty should be sought by the Agency in this matter. EPA would prefer to reach a negotiated resolution prior to the filing of a complaint. Thus, EPA is issuing this letter inviting the CSX to commence settlement discussions with EPA.

If CSX is interested in resolving this matter prior to the filing of a complaint, as described above, CSX should respond in writing within **fourteen (14) calendar days** of receipt of this letter. EPA is prepared to meet with representatives of CSX to further discuss the violations, potential penalties and settlement. Prior to the close of that first meeting, EPA expects that CSX will advise the Agency whether it is willing to make the required commitment to settle this case before litigation. In addition, a firm schedule for any continuing negotiations must be established prior to, or during, that first meeting, and settlement negotiations resulting in a signed Consent Agreement and Final Order (CAFO) and an Administrative Compliance Order on Consent must be completed within **ninety (90) calendar days** of receipt of this letter. Any final settlement and CAFO will be subject to final approval by the Regional Administrator for EPA Region III or his designee.

Please note that to the extent there are ongoing violations of the Permits, SWPPPs and /or SPCC Plans, these violations should be corrected immediately. EPA specifically reserves the right to use any and all enforcement tools at its disposal to address past and/or ongoing violations at your facilities regardless of any ongoing discussions in response to this Letter to Show Cause.

Please direct your written response as well as all questions and communications with respect to any matters addressed in this letter to the attorney assigned to represent EPA:

Andrew Duchovany (3RC20)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
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Philadelphia, PA 19103
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For your further information, please be advised that certain entities may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether CSX may be subject to the same.

I strongly encourage you to give this matter your full consideration, should CSX and EPA fail to reach a settlement agreement in this matter, EPA reserves the right to seek the maximum allowable penalty at law in litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Capacasa", with a long horizontal flourish extending to the right.

Jon Capacasa, Director
Water Protection Division

cc: Andrew Duchovnay (EPA)
Pete Gold (EPA)
Edwal Stone (MDE)
Sharon Talley (MDE)